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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/849,085	05/18/2004	Garry Tsaur		5652

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JOE NIEH
18760 E. AMAR ROAD #204
WALNUT, CA 91789

EXAMINER	
SIPOS, JOHN	
ART UNIT	PAPER NUMBER
3721	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/17/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/849,085	TSAUR, GARRY	
	Examiner	Art Unit	
	John Sipos	3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *16 October 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-11* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-11* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

REJECTIONS OF CLAIMS BASED ON PRIOR ART

Claims 1-11 are rejected under **35 U.S.C. ' 103(a)** as being unpatentable over the patent to Seifert (5,035,348) in view of Foster (3,661,666) and the Admitted Prior Art. The patent to Seifert shows the forming of a fluid dispenser comprising heat-sealing one end of the tube 14, filling the tube, sealing the other end of the tube 17 and affixing an applicator tip 32 at the other end of the tube (column 2, line 62 et seq.).

The patent to Seifert does not show the leaving of the applicator end of the tube open. The patent to Foster shows the forming of an applicator unit that comprises a tube with one sealed end 20 and open end on which an applicator tip 14 is fixed and which applicator tip is covered with a cap 16. It would have been obvious to one skilled in the art to eliminate the sealed portion of the tube between the applicator and the liquid of Seifert and use a cap as shown by Foster and thereby simplify and reduce the cost the process and maintain the applicator moistened by the liquid but protected by the cap.

As was stated in previous Office actions, the use of fixtures to hold a plurality of containers is well known and common knowledge in the packaging art and in view of these assertions and Applicants silence regarding them, the use of such a fixture is considered as an admission of prior art. It would have been obvious to one skilled in the art to use tube-holding fixture of the Admitted Prior Art in the process of Seifert to allow the holding of a container while freeing the hand of the operator and to handle more than one container.

Regarding claim 2, the patent to Foster shows the use of score line 154 and 216 in the tube that permits the user to easily open the container and remove the applicator tip's cover.

As was stated in the previous Office actions, the removal of excess liquid from a container (claims 3,5,8 and 10), the use of more than one substance in a single container (claim 4 and 9) and the centrifuge of a container (claims 6,7 and 11) are well known and common knowledge in the packaging art and in view of these assertions and Applicants silence regarding them, these are considered as an admission of prior art. It would have been obvious to one skilled in the art to remove excess liquid in the tubes of Seifert to allow the forming of a better seal; to use of more than one substance in the process of Seifert to allow the packaging of mixable products; and to centrifuge the tubes of Seifert to mix the contents as taught by the Admitted Prior Art.

Claims 1 and 8-11 are rejected under under **35 U.S.C. ' 103(a)** as being unpatentable over the patent to Ronco (3,369,543) in view of the Admitted Prior Art. The patent to Ronco shows in Figures 6-8 the forming of a fluid dispenser comprising sealing one end of the tube 16a while maintaining the other end open, filling the tube through the other end, and affixing an applicator tip 23 at the open end of the tube (column 6, line 64 et seq.). The phrase "while the other end of said plastic tubes remains open throughout the process" is read on either the maintaining the open end in its open state throughout the "sealing" process of the first one end (note the claim is does not refer to the filling and affixing steps) or is read on the open end of Ronco that remains open throughtout all the steps, including the filling and affixing steps, due to the presence of opening 27.

As was stated in previous Office actions, the use of fixtures to hold a plurality of containers is well known and common knowledge in the packaging art and in view of these

assertions and Applicants silence regarding them, the use of such a fixture is considered as an admission of prior art. It would have been obvious to one skilled in the art to use tube-holding fixture of the Admitted Prior Art in the process of Ronco to allow the holding of a container while freeing the hand of the operator and to handle more than one container.

The removal of excess liquid from a container (claims 8 and 10), more than one substance in a single container (claim 9) and the centrifuge of a container (claim 11) are well known in the art and the Examiner takes official notice that their use is common knowledge in the packaging art. In the above cases the modification of the Seifert operation would have been obvious to one skilled in the art for the known benefits of each modification. For example, removing excess liquid allows the forming of a better seal at the container end; the use of more than one substance permits the packaging of mixable products; and centrifuge of the container permits the mixing of the container.

Claim 2 are rejected under **35 U.S.C. ' 103(a)** as being unpatentable over the patent to Ronco (3,369,543) in view of of Foster (3,661,666). The patent to Ronco lacks the use of score line. The patent to Ronco further shows the use of a removable cover 14 for the applicator tip. The to Foster shows the use of score line 154 and 216 in the tube that permits the user to easily open the container and remove the applicator tip's cover. It would have been obvious to one skilled in the art to use an integral cover and a score line opening means of Foster for the cover of Ronco in order to simplify the opening mechanism.

Claims 3-7 are rejected under **35 U.S.C. ' 103(a)** as being unpatentable over the patent to Ronco (3,369,543) in view of of Foster (3,661,666) and further in view of the Admitted Prior Art.

As was stated in the previous Office actions, the removal of excess liquid from a container (claims 3 and 5), the use of more than one substance in a single container (claim 4) and the centrifuge of a container (claims 6 and 7) are well known and common knowledge in the packaging art and in view of these assertions and Applicants silence regarding them, these are considered as an admission of prior art. It would have been obvious to one skilled in the art to remove excess liquid in the tubes of Ronco to allow the forming of a better seal; to use of more than one substance in the process of Ronco to allow the packaging of mixable products; and to centrifuge the tubes of Ronco to mix the contents as taught by the Admitted Prior Art.

Claim 1-11 is rejected under under **35 U.S.C. ' 103(a)** as being unpatentable over the patent to Bennington (3,958,571) in view of Ronco (3,369,543) in view of the Admitted Prior Art.

The patent to Bennigton shows the forming of a fluid dispenser that comprises the steps of applying an applicator tip 14 to open end 16 of a tube 12, filling the tube with a liquid 18 and sealing the other end of the tube 20 while maintaining the open end of the tube in an open state throughout the process. The Bennigton patent uses a process reversed from the one recited in the claims.

The patent to Ronco shows in Figures 6-8 the forming of a fluid dispenser comprising sealing one end of the tube 16a while maintaining the other end open, filling the tube through the other end, and affixing an applicator tip 23 at the open end of the tube (column 6, line 64 et seq.). It would have been obvious to one skilled in the art to form the dispenser of Bennigton by first

sealing the end 20 and after filling the tube finally affixing the applicator tip to the tube as taught by Ronco thereby simplifying the process.

As was stated in previous Office actions, the use of fixtures to hold a plurality of containers is well known and common knowledge in the packaging art and in view of these assertions and Applicants silence regarding them, the use of such a fixture is considered as an admission of prior art. It would have been obvious to one skilled in the art to use tube-holding fixture of the Admitted Prior Art in the process of Ronco to allow the holding of a container while freeing the hand of the operator and to handle more than one container.

Regarding claim 2, the patent to Bennigton shows the use of weakening and score lines 22 and 32 in the tube that permits the user to easily open the container.

As was stated in the previous Office actions, the removal of excess liquid from a container (claims 3,5,8 and 10), the use of more than one substance in a single container (claim 4 and 9) and the centrifuge of a container (claims 6,7 and 11) are well known and common knowledge in the packaging art and in view of these assertions and Applicants silence regarding them, these are considered as an admission of prior art. It would have been obvious to one skilled in the art to remove excess liquid in the tubes of Bennigton to allow the forming of a better seal; to use of more than one substance in the process of Bennigton to allow the packaging of mixable products; and to centrifuge the tubes of Bennigton to mix the contents as taught by the Admitted Prior Art.

RESPONSE TO APPLICANT'S ARGUMENTS

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP ∋ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry concerning this communication should be directed to **Examiner John Sipos** at telephone number **571-272-4668.** The examiner can normally be reached from 6:30 AM to 4:00 PM Monday through Thursday.

The **FAX** number for U.S. Patent and Trademark Office is **(571) 273-8300.**

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Rinaldi Rada, can be reached at **571-272-4467**.

John Sipos
Primary Examiner
Art Unit 3721

js